

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STERLING MCKOY,

Plaintiff,

v.

MIKE FAHEY, Mayor, HAL DAUB,
Former Mayor, CITY OF OMAHA,
THOMAS WARREN, The Chief of
Police, ALAN PEPIN, JOHN DOE,
JEFFERY GASSAWAY, Officer,
and GEORGE COLLINS, Officer,

Defendants.

8:08CV194

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Motion for Reconsideration Regarding Judgment. (Filing No. [17](#).) Plaintiff's Motion seeks the reconsideration of the court's August 15, 2008 Memorandum and Order and Judgment dismissing Plaintiff's claims without prejudice. (Filing Nos. [15](#) and [16](#).) Summarized, Plaintiff argues that his claims are not barred by [Preiser v. Rodriguez, 411 U.S. 475 \(1973\)](#) and [Heck v. Humphrey, 512 U.S. 477 \(1994\)](#).

The court has carefully reviewed Plaintiff's Motion, including the cases cited, and the Complaint in this matter. As previously stated, Plaintiff's claims relate entirely to the validity of his arrest and conviction and this court could grant none of the relief sought by Plaintiff without first determining that his conviction and incarceration were unlawfully obtained.¹ In short, the court finds no good cause for

¹In an attempt to avoid *Heck*, Plaintiff sets forth in his Motion numerous new allegations relating to his convictions which were not included in his Complaint and which are unsupported by the record. Even if those allegations were true, and if the

reconsideration of any portion of its August 15, 2008 Memorandum and Order.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Reconsideration Regarding Judgment (filing no. [17](#)) is denied.

2. Pursuant to the Prison Litigation Reform Act, Plaintiff is hereby notified that the filing of a notice of appeal by a prisoner makes the prisoner liable for payment of the full \$455.00 appellate filing fee regardless of the outcome of the appeal. An incarcerated civil appellant is required to pay the full amount of the \$455.00 filing fee by making monthly payments to the court, even if he or she is proceeding in forma pauperis. [28 U.S.C. § 1915\(b\)](#).

3. By filing a notice of appeal, the prisoner consents to the deduction of the \$455.00 filing fee from the prisoner's prison account by prison officials. The prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal. Failure to file the prison account information will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

October 6, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

court considered them, the underlying convictions are still implicated and *Heck* still applies.